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THE CORPORATION TRUST COMPANY AND ASSOCIATED COMPANIES

In the incorporation, qualification and statutory representation of corporations, The Corporation Trust Company, C T Corporation System and associated companies deal with and act for lawyers exclusively.

The 5 tests of a good Transfer Agent

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—Know-How

The regular routine transfers of a company's stock involve no great skill in the making—it is the record-keeping of them that requires the greater care. But *any* corporation, large or small, its stock closely held or widely distributed, comes inevitably some day to the transfer of the shares of a deceased stockholder. Then on the question of *authority* for the transfer—administrator's or executor's appointment, compliance with terms of the will or court order, etc.—hangs the decision of whether to make the transfer or refuse it. The company's officers and directors are responsible for any damage the decision may cause the rightful owner.

In this respect, The Corporation Trust Company occupies a strong position. Its organization has been intimately associated with the evolution and development of the present practices and precedents in the business of making transfers—in fact, the Stock Transfer Guide Service which it created (now maintained by its affiliate, Commerce Clearing House) is the authority almost all good transfer agents depend on. So this organization is well equipped, in fact extraordinarily equipped, to keep the corporation's officers and directors safe from the unauthorized transfers of stock.

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Statutes of Limitation

Franchise Taxes

An examination of the statutes imposing state franchise taxes upon business corporations discloses that in many states there appear to be no provisions restricting the state in the assessment or collection of such franchise taxes after the lapse of a definite period of time.

There is little or no uniformity in the statutory provisions of the states in which limitations were found to exist. For instance, in four states the limitation may, generally, be said to be related to the time within which actions may be instituted for the recovery of amounts claimed for franchise taxes. In Alabama, the period is five years; in Idaho, three years; in Maryland, four years and in Missouri, five years.[1] In Louisiana, such taxes "prescribe," under a constitutional provision, the state's claim being barred three years from the last day of the calendar year in which such taxes are due.[2]

In two states, the limitation is concerned with a specified period which begins with the date the franchise tax return is filed. In Mississippi and Oklahoma, this period is three years.[3]

In North Carolina, there is a provision related to a deficiency assessment, under which notice may be given of the deficiency within three years after the time the return was due.[4] The Ohio franchise tax law contains a provision that where a corporation fails to file a report or reports any essential information erroneously, the Department of Taxation, in determining the amount due, is limited to the five years preceding the year in which its inquiry is made.[5]

A Texas statute provides that "no delinquent taxpayer shall have the right to plead in any court or in any manner rely upon any statute of limitation by way of defense against the payment of taxes due from him or her to the State" and certain of its subdivisions.[6] In Rhode Island, discovery by the tax administrator of the failure of a taxable corporation to file a corporate excess tax return places upon that official the duty to assess the tax from any information he can obtain for every prior year for which no return has been made, with interest from the time at which the tax would have been payable.[7] Michigan provides a two-year period within which actions must be brought which are based on the neglect or refusal of officers of a corporation to file franchise tax reports.[8]

[1] Alabama CT (Corporation Tax) Service, ¶ 3-003; Idaho CT, ¶ 300.1; Maryland CT, ¶ 3-001; Missouri CT, ¶ 3-000.01.
[2] Louisiana CT, ¶ 5-006. (Louisiana Constitution, Art. XIX, Sec. 19.)
[3] Mississippi CT, ¶ 7-001; Oklahoma CT, ¶ 89-215.
[4] North Carolina CT, ¶ 7-103.
[5] Ohio CT, ¶ 3-711.
[6] Texas CT, ¶ 3-000.01.
[7] Rhode Island CT, ¶ 210.
[8] Michigan CT, ¶ 3-704.

Domestic Corporations

Delaware.

Demurrer sustained to bill seeking to cancel issue of stock on ground of fraud and lack of consideration, where bill lacked pertinent facts. Complainant preferred stockholders sued as representatives of that class, on behalf of the defendant corporation, seeking a decree for the cancellation of the entire no par common voting stock of the company on the ground of fraud and lack of consideration. The purported consideration for the entire common stock issue was the grant to the corporation by one John Allen Heany of an exclusive license for six months to use certain United States patent rights and any rights that might be granted on pending applications, and it was alleged that the license was valueless and known to be by the officers and directors of the company. The Court of Chancery, New Castle County, sustained the demurrer of the appearing defendants, after an examination of the allegations of the bill, finding therein conclusions and opinions, rather than statements of essential facts, noting, with regard to the patents involved: "Neither the prior state of the art, court decisions holding the patents invalid, nor any other possible pertinent facts are stated." An allegation that the corporation knew it would not be possible or practicable to obtain any value from the purported license within the six months period was regarded by the court as "not sufficiently definite to justify the conclusion that fraud appears." *West et al. v. Sirian Lamp Company et al.*, Court of Chancery, New Castle County, November 14, 1945. Hugh M. Morris of Morris, Steel, Nichols & Arsht of Wilmington, for complainants. Howard Duane and Harry Rubenstein of Wilmington (William Bohleber of New York City, of counsel), for defendants. Commerce Clearing House Court Decisions Requisition No. 346781.

New York.

Stockholders' derivative suit under Sec. 61, G. C. L., dismissed where the stockholders became such after wrong complained of occurred. Plaintiffs sued on their own behalf and on behalf of all other preferred stockholders of their corporation for the alleged failure of defendants to take steps to collect amounts claimed to have been illegally paid by the corporation by reason of its assumption and payment of an indebtedness for which it was not obligated. Defendants moved to dismiss, challenging the derivative stockholders' suit as insufficient on the ground, among others, of noncompliance with Section 61 of the General Corporation Law in that plaintiffs, at the time of the original wrong complained of, were not stockholders, which was the fact. Plaintiffs first alleged that the alleged wrong was a continuing wrong to the present time, in that defendants thereafter failed to take steps to collect the amounts claimed to have been illegally paid. "But failure to attempt to recoup an improper payment, without more," said the New York Supreme Court, Special

Term, New York County, "is indistinguishable from the original wrong in making the payment and is the same and not a recurring and ever fresh wrong." It was next argued by plaintiffs that, as this requirement of the section had been held inapplicable to pending actions, it was likewise inapplicable to antecedent rights involved in causes of action which accrued prior to the effective date of the amendment of Section 61 by Ch. 667, Laws of 1944, which was April 9, 1944, as at bar. Remarking that the amendment was essentially procedural and would ordinarily be given retrospective effect in the absence of a contrary legislative expressed intention, the court observed: "Thus, even if plaintiffs had been stockholders prior to April 9, 1944, the effective date of the amendment to the statute, and even though an accrued cause of action prior thereto be an antecedent right, Hastings v. H. M. Byllesby & Co., 293 N. Y. 413, 419, 57 N. E. 2d 737, 740, as to them the statute is held purely procedural, retroactive and applicable. In fact these plaintiffs purchased their stock between June, 1944, and February, 1945, after the effective date of the act. To hold, on the theory advanced, that the amendment does not apply to subsequent purchasers of stock on the open market, would largely nullify the statute and reopen evils and abuses in stockholders' derivative suits thus thought to be allayed." The motion to dismiss the complaint was granted. *White et al. v. Phillips et al.*, 58 N. Y. S. 2d 52. Louis Boehm (Louis Boehm and Bernard D. Fischman, of counsel), of New York City, for plaintiffs. Lazansky, Callaghan, Stout and Nova of New York City, for defendants Ellis L. Phillips and E. L. Phillips & Co. Charles G. Blakeslee of Mineola, for defendants Long Island Lighting Co., Barrett, Carpenter and Link. Underhill & Foster of Brooklyn, for defendant Queens Borough Gas & Electric Co. Philip Huntington of Glen Cove, for defendant Nassau & Suffolk Lighting Co. David Holman of Hempstead (Charles G. Blakeslee of Mineola, David Holman of Hempstead, and John C. Bruckman and Charles E. Elbert of New York City, of counsel), for defendant Long Beach Gas Co., Inc.

Director-stockholder ruled entitled to examine corporate books and records. This was an application by a director-stockholder of a domestic corporation for a peremptory order directing the examination and inspection of the books, papers and records of the corporation. Petitioner had been a director and stockholder of the corporation continuously since its inception in 1937. In granting the application, the Supreme Court, Special Term, New York County, made the following remarks: "From the petition it appears that the demand for examination and inspection is made in good faith." "As a stockholder petitioner has a right to examine corporate books to determine whether the officers are properly managing its affairs." "All he need show to entitle him to an inspection is that he is a director of the corporation, that he demanded permission to examine and inspect, and that his demand was refused. Having shown to the satisfaction of the court that he is a director and stockholder and that he has not been permitted to make such examination of the books and records

as would enable him to obtain the exact status of the affairs of the corporation, this motion is accordingly granted." It was indicated that petitioner might be assisted by his attorney and accountant. *In re Hassuk*, 57 N. Y. S. 2d 798. Markewich, Rosenhaus & Markewich (Arthur K. Garfinkel, of counsel), of New York City, for petitioner. Nat C. Helman of New York City, for respondents.

Voting trustees ruled subject to statutory penalty for refusal to permit inspection of certificate book. Petitioners sought an inspection of the voting trust certificate book, books of account, minute and record books of Crescent Plaza Corporation kept by respondent voting trustees, proceeding under Section 50 of the Stock Corporation Law. The Supreme Court, Special Term, New York County, found petitioners clearly entitled under Section 50 to an inspection of the certificate books, including the list of voting trust certificate holders, noting that they did not seek the list for the purpose of communicating with certificate holders "in the interest of a business or object other than the business of the corporation," and that they also met the eligibility requirements of subdivision (b) of Section 50. Respondents did not deny that there was a refusal of an inspection of the certificate book on January 25, 1944. The court ruled that petitioners were entitled under the statute to a penalty of $50 for this refusal. Section 50 contains a provision that inspection may be denied upon the refusal of the certificate holder to furnish the voting trustees a written statement that the inspection is not desired "for the purpose of communicating with certificate holders in the interest of a business or object other than the business of the corporation." The court remarked that petitioners were not obliged to furnish the statement referred to in the statute except upon demand for such a statement by respondents. "The section provides," said the court, "that inspection may be denied 'upon refusal' to furnish the statement. There can be no 'refusal' in the absence of a request for the statement." *Application of Spanierman et al.*, 58 N. Y. S. 2d 10, 322. Lyman Stansky of New York City, for petitioners. Engel, Judge & Miller (Dan Gordon Judge, of counsel), New York City, for trustees.

Texas.

Voting agreement, by majority stockholders, to vote stock as a unit, ruled invalid. Three stockholders in the intervenor corporation, owning a majority of its stock, had entered into an agreement to vote their shares collectively by voting them in a block upon any question presented to the stockholders for decision, and, in case of disagreement, to submit the issue to arbitration in a specified way. Subsequently one of these stockholders notified another, who was the plaintiff below, that he regarded the agreement as not binding and of no further force and effect. The plaintiff thereupon instituted suit for injunctive relief to compel the two other stockholders to comply with the agreement. The lower court granted a temporary restraining order and, after a hearing, granted the temporary injunction

prayed for, which was subsequently made permanent. The questions raised on appeal were: (a) Was the voting agreement revocable? (b) Was it in derogation of laws controlling corporations and against public policy? The Court of Civil Appeals of Texas, Dallas, concluded that the agreement was revocable and that it was in derogation of the laws of the state controlling corporations, against public policy, and void. The agreement was viewed as not based upon any consideration deemed valuable in law and as separating the ownership and power to vote the stock and clearly disfranchising those acquiring a minority of the stock from one of the three parties to the agreement, since one so acquiring the stock was to be bound by the terms of the agreement. The judgment of the lower court was set aside, the injunction was dissolved and the voting agreement ruled invalid. *Roberts et al. v. Whitson*, 188 S. W. 2d 875. D. A. Frank, M. S. Church and William H. Francis of Dallas, for appellants. Hassell & Hassell, Hughes & Monroe and P. P. Ballowe of Dallas, for appellee.

Foreign Corporations

Arizona.

Sales on consignment in interstate commerce ruled not doing business for purpose of service of process upon foreign corporation making the sales to a local dealer. In a recent Supreme Court of Arizona decision, one of the questions concerned the validity of the service of process effected upon one of the defendant foreign corporations which appeared specially and moved to set aside the service on the ground that it was a nonresident corporation, not qualified to transact business in Arizona, that it had never transacted business there, and that the person served was not its agent for any purpose. The evidence showed that the corporation had not maintained any office in Arizona nor appointed any agent there and that it was engaged solely in interstate commerce by consigning its periodicals from points without the state to the person who was served with process, who remitted monthly for all magazines shipped to him. The trial court was upheld in granting the motion to set aside the purported service. The State Supreme Court observed: "Sales on consignment, factorage agreements, or sales on commission, by a foreign corporation to a dealer within the state, of products from without the state, do not constitute doing business within the state, where the local merchant or factor acts entirely in his own behalf in making sales or contracts for the sale of such goods." *Reed v. Real Detective Publishing Co., Inc., et al.*, 162 P. 2d 133. V. L. Hash of Phoenix, for appellant. Blaine B. Shimmel and Wallace W. Clark of Phoenix, for appellees.

New York.

Court rules it has no visitorial right over foreign membership corporation. Petitioner sought an injunction restraining respondent

District of Columbia membership corporation from holding its annual meeting in New York and directing it to disclose to petitioner the names and addresses of its members. The company maintained an office in New York City, in which a list of the members was kept and it was contemplated that the annual meeting would be held there. The Supreme Court, Special Term, New York County, denied the petition, pointing out that in this state "it is the rule that this court is without power to exercise any visitorial right with respect to a foreign corporation." The fact that the corporation held its meeting and maintained offices in the state was viewed as not conferring such visitorial power on the court over a foreign membership corporation. The court concluded it was without power to direct the respondent to make available to petitioner a list of its members. *Alfred Kohlberg, Inc. v. American Council of the Institute of Pacific Relations, Inc.*, 56 N. Y. S. 2d 788. Meleney, Ryan & Stevenson (Clarence C. Meleney, of counsel), of New York City, for petitioner. Shearman, Sterling & Wright (Carl A. Mead and Lester Kissel, of counsel) of New York City, for respondent.

North Dakota.

Statute prohibiting ownership of farm land by corporations upheld by the Supreme Court of the United States. In *Asbury Hospital v. Cass County et al.*, 7 N. W. 2d 438, 16 N. W. 2d 523, (The Corporation Journal, October, 1942, page 232), the Supreme Court of North Dakota ruled that a North Dakota Initiative Measure of 1932 which required domestic and foreign corporations owning or holding rural real estate, "used or usable for farming or agriculture, except such as is reasonably necessary in the conduct of their business," to dispose of it within ten years, when applied to appellant, a Minnesota non-profit corporation, which owned such property which it had acquired prior to the effective date of the law, did not operate "to infringe upon or deny any right guaranteed to it by the several provisions of the Constitution of the United States and the Constitution of the State of North Dakota." Upon appeal to the Supreme Court of the United States, the judgment has been affirmed. In discussing whether the state's powers over a foreign corporation as such justify the compulsory disposition of its farm land within the state, the highest court observed that the Fourteenth Amendment does not deny to the state power to exclude a foreign corporation from doing business or acquiring or holding property within it, and that a state's power to exclude a foreign corporation, or limit the nature of the business it may conduct within the state, does not end as soon as the corporation has lawfully entered the state and there acquired immovable property. "Subsequent legislation excluding such a corporation from continuing in the state has been sustained as an exercise of the general power to exclude foreign corporations which does not offend due process." The fact that there was less than a total exclusion of appellant from the state led the court to remark: "The total exclusion of a corporation owning fixed property within a state

requires it to sell or otherwise dispose of such property. Appellant must do no more. While appellant is not compelled by the present statute to cease all activities in North Dakota, the greater power includes the less." *Asbury Hospital v. Cass County et al.*, 66 S. Ct. 61. Herbert G. Nilles of Fargo, for appellant. Nels G. Johnson of Bismarck, for appellees. Commerce Clearing House Court Decisions Requisition No. 346077.

Washington.

Foreign corporation, employing salesmen engaged in interstate commerce, ruled subject to service of process in proceedings under state unemployment insurance law. In *International Shoe Company v. State et al.*, 154 P. 2d 801, (The Corporation Journal, May, 1945, page 352), the Washington Supreme Court ruled that a foreign corporation, engaged in interstate commerce, which employed salesmen in Washington, on one of whom the service of a notice of assessment of delinquent unemployment insurance contributions was made, was subject to such service in proceedings under the state unemployment insurance law. Upon appeal, the Supreme Court of the United States has affirmed this judgment. The court observed that the activities carried on in behalf of the corporation, the appellant, in Washington were neither irregular nor casual. "They were systematic and continuous throughout the years in question. They resulted in a large volume of interstate business, in the course of which appellant received the benefits and protection of the laws of the state, including the right to resort to the courts for the enforcement of its rights. The obligation which is here sued upon arose out of those very activities. It is evident that these operations established sufficient contacts or ties with the state of the forum to make it reasonable and just according to our traditional conception of fair play and substantial justice to permit the state to enforce the obligations which appellant has incurred there. Hence we cannot say that the maintenance of the present suit in the State of Washington involves an unreasonable or undue procedure. We are likewise unable to conclude that the service of the process within the state upon an agent whose activities establish appellant's 'presence' there was not sufficient notice of the suit, or that the suit was so unrelated to those activities as to make the agent an inappropriate vehicle for communicating the notice." "Appellant having rendered itself amenable to suit upon obligations arising out of the activities of its salesmen in Washington, the state may maintain the present suit in personam to collect the tax laid upon the exercise of the privilege of employing appellant's salesmen within the state. For Washington has made one of those activities, which taken together establish appellant's 'presence' there for purposes of suit, the taxable event by which the state brings appellant within the reach of its taxing power. The state thus has constitutional power to lay the tax and to subject appellant to a suit to recover it. The activities which establish its 'presence' subject it alike to taxation by the state and to suit

Pity the poor c p

Corporate charters, like men's som
times don't fit. And pity the p oratio
that finds itself in that fix!

Either it must struggle alon t som
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should enjoy and which compet enjo
or it must reorganize. Mighty e eith
course may be too.

Sometimes the misfit is in a tricte
purpose clause; sometimes a narro
capitalization structure; someti law
the state in which incorporated he co
poration practically in a strait s con
pared with competitors orga oth
states.

Paraphrasing the old Neg tual,
lawyer organizing a new comp ld loo
down, look down that long, dar clie
must travel when it gets into b An
he should do it *before* he cuts i g su
—its corporate charter.

The Corporation Trust syste p ligh
the way for him.

poration...

If a lawyer wishes to study carefully the best state for incorporation of a client's particular business, the Corporation Trust system will bring him, without obligation, the features of the corporation laws of any states he may have in mind so analytical comparisons may be made. If a lawyer is concerned over the most suitable capital set-up, or the soundest purpose clauses, or the most practicable provisions for management and control, we will bring him extracts from the charters of other successful corporations on which to formulate his own plans.

to recover the tax." *International Shoe Company v. State et al.*, Supreme Court of the United States, December 3, 1945; Docket No. 107. Commerce Clearing House Court Decisions Requisition No. 347470.

Taxation

Tennessee.

Company held subject to transportation company gross receipts tax related to transporting of commodities into federal areas within the taxing state. Complainant corporation sought to recover a privilege tax imposed upon those engaged in the business of operating a transportation company, levied upon the gross receipts derived from intrastate business in Tennessee. The tax had been assessed and collected upon certain commodities which by contract were transported to Memphis, Tennessee, and delivered to certain United States Government reservations within the geographical limits of Tennessee. It was contended that the lands upon which the reservations were located were acquired by the United States pursuant to Article 1, Section 8, Clause 17, of the Federal Constitution and that exclusive jurisdiction was ceded to the United States by the laws of Tennessee, Section 98 of the Code of 1932, and that the state had no authority to levy a tax upon articles that were being delivered to these army bases. Defendant denied that the United States acquired "exclusive jurisdiction" over the areas ceded, and contended that the complainant, in transporting the commodities involved, never departed from the geographical limits of Tennessee. The Supreme Court of Tennessee affirmed the decree of the Chancellor ruling that the shipments in question did not constitute interstate commerce and concluded that an exemption could not be claimed on that ground, since army camps are not states within the meaning of the commerce clause of the Federal Constitution. The court regarded as unsound the proposition that Tennessee had lost complete sovereignty over the areas in question, observing: "It does not appear that Congress has, by appropriate legislation, declared complete sovereignty over these areas by the government, to the exclusion of the State's right to impose a tax upon transactions not beginning or ending within such areas." *Motor Transport Co v. McCanless*,* 189 S. W. 2d 200.

* The full text of this opinion is printed in **The Corporation Tax Service, Tennessee, page 8107.**

Texas.

Stock, which was redeemed and retired without complying with statutory requirements for decrease of capital stock, ruled as still to be included as outstanding capital stock for franchise tax purposes. The Texas franchise tax is based upon the allocated "outstanding capital stock, surplus and undivided profits, plus the amount of outstanding bonds, notes and debentures." The question raised concerned whether certain preferred stock of appellant, which had been redeemed and retired by it between 1929 and 1941, without, however,

complying with the formalities provided by statute in Art. 1332, RCS, was still "outstanding capital stock" for franchise tax purposes. The state had so regarded it and appellant sought to recover franchise taxes to the extent based upon such stock after its redemption and retirement, together with interest and penalties paid under protest. Art. 1332 provides the manner in which the capital stock of a corporation may be decreased and stipulates that "such decrease shall not become effective until full proof is made by affidavit of the directors to the Secretary of State of the financial condition of the corporation, giving therein all its assets and liabilities, with names and post-office addresses of all creditors and amount due each." The Texas Court of Civil Appeals, Austin, affirmed a judgment in favor of the State, concluding that "until that capital is reduced as provided by law, it remains outstanding for franchise tax purposes." The court remarked that the provisions of Art. 1332 "clearly indicate a strict compliance therewith is required, not only for the information and benefit of the State, but to enable the Secretary of State to ascertain whether the financial condition of the corporation, and the rights of its creditors, will authorize or permit such a reduction. These considerations constitute a cogent reason for requiring a corporation before it can have its tax burden reduced, to meet the requirements of the law which provides the method by which it may be done." *A. B. Frank Company v. Latham et al.*,* Texas Court of Civil Appeals, Austin, November 7, 1945. Dodson, Ezell & Duke of San Antonio, for appellant. Grover Sellers, Attorney General; W. V. Geppert and J. A. Sandlin, Assistant Attorneys General, for appellee. Commerce Clearing House Court Decisions Requisition No. 346396.

* The full text of this opinion is printed in **The Corporation Tax Service, Texas**, page 574.

Utah.

Purchase price, forming basis of sales tax, ruled not to include federal luxury tax. Plaintiff corporation was a retailer of furs. It contended that the State Tax Commission, in the assessment of the state sales tax in connection with its taxable sales, had erroneously included in the purchase price the amount of the federal luxury tax. The Sales Tax Act defined the term "purchase price" to mean "the price to the consumer exclusive of any tax imposed by the federal government or by this act." In ruling that the federal luxury tax, although imposed after the sales tax law was enacted, was to be excluded, the Supreme Court of Utah observed: "The palpable fact is that, if the words be given any meaning, they must be held to contemplate at least any Federal tax which is based on the very transaction with which the legislature was dealing—a sale of personal property at retail—and which Federal tax if included in the definition of 'purchase price' upon which the tax is based would increase that basis. We so hold." *Dupler's Art Furs, Inc. v. State Tax Commission*, 161 P. 2d 788. White, Wright & Arnovitz, for plaintiff. Wayne Christoffersen and Aldon J. Anderson, for defendant.

Appealed to the Supreme Court.

The following cases previously digested in The Corporation Journal have been appealed to The Supreme Court of the United States.*

INDIANA. Docket No. 4. *Hewit v. Freeman*, 51 N. E. 2d 6. (The Corporation Journal, November, 1944, page 233.) Indiana Gross Income Tax Act—application to proceeds from sales of corporate stocks and bonds by resident owner to non-residents through brokers. **Appeal filed, March 13, 1944. Jurisdiction noted, April 3, 1944. Argued, November 8, 1944. Restored to Docket and assigned for reargument, June 18, 1945. On reargument, counsel requested to address themselves in their briefs and on oral argument to specified questions, October 8, 1945.**

NEW YORK. Docket No. 100. *Williams et al. v. Green Bay & Western R. Co.*, 147 F. 2d 777. (The Corporation Journal, December, 1945, page 47.) Corporations—jurisdiction of court over suit to require payment by foreign corporations of net earnings to debenture holders. **Petition for certiorari filed, May 31, 1945. Petition for certiorari granted, October 8, 1945. Argued, December 10, 1945.**

NEW YORK. Docket Nos. 518-519. *Carter & Weeks Stevedoring Co. v. McGoldrick et al.; John T. Clark & Son v. McGoldrick et al.*, 294 N. Y. 906, 908. (The Corporation Journal, December, 1945, page 52.) New York City business tax—applicability to stevedoring activities within city limits. **Petition for certiorari filed October 17, 1945. Certiorari granted, November 19, 1945.**

NORTH DAKOTA. Docket No. 35. *Asbury Hospital v. Cass County et al.*, 16 N. W. 2d 523, which followed ruling in *Asbury Hospital v. Cass County et al.*, 7 N. W. 2d 438. (The Corporation Journal, October, 1942, page 232.) Constitutionality of North Dakota statute prohibiting corporation farming—application to non-profit hospital corporation. **Appeal filed, February 6, 1945. Probable jurisdiction noted and case transferred to the summary docket, March 5, 1945. Argued, October 10 and 11, 1945. Dismissed in part and affirmed in part, November 5, 1945.** (See page 68.)

PENNSYLVANIA. Docket No. 40. *In re Defense Plant Corporation, (Defense Plant Corporation v. County of Beaver)*, 39 A. 2d 713. (The Corporation Journal, May, 1945, page 353.) State taxation—machinery owned by government agency and attached to freehold—taxation as real property. **Appeal filed, February 24, 1945. Probable jurisdiction noted, March 26, 1945.**

UTAH. Docket Nos. 424-425. *State Tax Commission et al. v. Kennecott Copper Corporation; State Tax Commission et al. v. Silver King Coalition Mines Company*, 150 F. 2d 905. (The Corporation Journal, December, 1945, page 54.) Utah Mining Occupation tax—jurisdiction of federal court over suit to recover state occupation tax paid under protest. **Petition for certiorari filed, September 12, 1945. Certiorari granted, November 5, 1945.**

VIRGINIA. Docket No. 72. *Nippert v. City of Richmond*, 33 S. E. 2d 206. (The Corporation Journal, December, 1945, page 55.) Municipal license tax on solicitors—constitutionality of Richmond ordinance as applied to agent for manufacturer doing interstate business. **Appeal filed, May 14, 1945. Jurisdiction noted, June 11, 1945. Argued, November 8, 1945.**

WASHINGTON. Docket No. 107. *International Shoe Company v. State et al.*, 154 P. 2d 801. (The Corporation Journal, May, 1945, page 352.) Unemployment insurance—delinquency assessment—service of process on foreign corporation. **Appeal filed, June 4, 1945. Jurisdiction noted, June 18, 1945. Argued, November 14, 1945. Affirmed, December 3, 1945.** (See page 69.)

* Data compiled from **CCH U. S. Supreme Court Service, 1945-1946.**

Regulations and Rulings

CALIFORNIA—The cost of property to a retailer must be included in the measure of the sales tax where the retailer leases the property to a contractor for use in the performance of a contract with the United States. The liability for the tax is not extinguished by reason of the fact that the United States subsequently exercises an option to buy the property with rentals credited on the purchase price. (Opinion of the Attorney General to the State Board of Equalization, California CT, ¶ 64-515.)

FLORIDA—New cigarette tax regulations have recently been issued by the State Beverage Department. (Florida CT, page 5901.)

MISSOURI—Bus lines are not subject to the payment of a use fuel tax on the use of gasoline in travelling across the State of Missouri, inasmuch as the motor fuels subject to a use fuel tax does not include gasoline. (Attorney General's Opinion to State Inspector of Oils, Missouri CT, ¶ 40-305.)

Upon the expiration of the corporate existence of a foreign corporation in Missouri, it is necessary that such foreign corporation requalify before being permitted to operate in this State. H. B. No. 64, Laws of 1943, does not grant foreign corporations the same authority to extend its corporate existence by amending its articles of incorporation as it did for domestic corporations. (Attorney General's Opinion to the Secretary of State, Missouri CT, ¶ .011.)

NORTH CAROLINA—Money on deposit in North Carolina, collected by out-of-state agents on out-of-state property represents a custodial account and fails to acquire a business or taxable situs in this state. Local representatives have no authority to withdraw or control these out-of-state funds from the time they become money on deposit; only officials in the home office of the corporation are entitled to do so. Thus, such money is not subject to the intangible tax in North Carolina. (Opinion of the Attorney General to the Commissioner of Revenue, North Carolina CT, ¶ 25-101.)

Leasing of personal property by a foreign corporation within a non-domiciliary state does not constitute doing business for income tax purposes within such state. The corporation maintains no agents or offices in North Carolina; it merely leases equipment for carrying on contracting work within the state under a contract executed out-of-state. The state, therefore, does not have the power to tax such a corporation's income. (Opinion of Attorney General to Commissioner of Revenue, North Carolina CT, ¶ 15-012.)

TEXAS—The Secretary of State may disclose the name of a corporation making a franchise tax report, the names and addresses of the officers and directors of a corporation, the location of its principal place of business, the name and address of the agent on whom service of process may be had and the amount of franchise taxes and penalties due and owing by a corporation to the State of Texas. (Opinion of the Attorney General to the Secretary of State, Texas CT, ¶ 15-030.)

Some Important Matters for January and February

This Calendar does not purport to be a *complete* calendar of all matters requiring attention by corporations in any given state. It is a condensed calendar of the more important requirements covered by the *State Report and Tax Bulletins* of The Corporation Trust Company. Attorneys interested in being furnished with timely and complete information regarding *all* state requirements in any one or more states, including information regarding forms, practices and rulings, may obtain details from any office of The Corporation Trust Company or C T Corporation System.

ALABAMA—Annual Application for Permit to do Business due on or before February 1.—Domestic and Foreign Corporations.

Report of Resident Stockholders and Bondholders due on or before February 1.—Domestic and Foreign Corporations.

ALASKA—Annual Report due within 60 days from January 1.—Domestic and Foreign Corporations.

ARKANSAS—Franchise Tax Report due on or before March 1.—Domestic and Foreign Corporations.

CALIFORNIA—Quarterly Retail Sales Tax Return and Payment due on or before January 15.—Domestic and Foreign Corporations.

Returns of Information at the source and Returns of Tax Withheld at the source due on or before February 15.—Domestic and Foreign Corporations.

COLORADO—Returns of Information at the source due on or before February 15.—Domestic and Foreign Corporations.

CONNECTICUT—Annual Report due on or before February 15 (if corporation was organized or qualified between January 1 and June 30 of any previous year).—Domestic and Foreign Corporations.

DELAWARE—Annual Report due on or before first Tuesday in January. —Domestic Corporations.

DISTRICT OF COLUMBIA—Annual Report due between January 1 and January 20.—Domestic Corporations.

DOMINION OF CANADA—Returns of Information at the source due on or before February 28.—Domestic and Foreign Corporations.

ILLINOIS—Annual Report due between January 15 and February 28.—Domestic and Foreign Corporations.

INDIANA—Gross Income Tax Return and Payment due on or before January 31.—Domestic and Foreign Corporations.

Returns of Information at the source due on or before January 31.—Domestic and Foreign Corporations.

Returns of Withholding at the source due on or before January 31.—Domestic and Foreign Corporations.

IOWA—Quarterly Retail Sales Tax Returns and Payment due on or before January 20.—Domestic and Foreign Corporations.

KANSAS—Returns of Information at the source due on or before March 1.—Domestic and Foreign Corporations.

KENTUCKY—Returns of Withholding at the source due on or before January 31.—Domestic and Foreign Corporations.

LOUISIANA—Annual Report due on or before February 1.—Domestic Corporations.

Capital Stock Statement due on or before March 1.—Foreign Corporations.

Returns of Information at the source due on or before February 15.—Domestic and Foreign Corporations.

MAINE—Annual License Fee due on or before March 1.—Foreign Corporations.

MARYLAND—Returns of Information at the source and Returns of Tax Withheld at the source due on or before February 15.—Domestic and Foreign Corporations.

MASSACHUSETTS—Returns of Information at the source due on or before March 1.—Domestic and Foreign Corporations.

MINNESOTA—Annual Report due between January 1 and April 1.—Foreign Corporations.

Returns of Information at the source due on or before March 1.—Domestic and Foreign Corporations.

MISSOURI—Returns of Information at the source due on or before March 1.—Domestic and Foreign Corporations.

Annual Franchise Tax Report due on or before March 1.—Domestic and Foreign Corporations.

MONTANA—Annual Report of Capital employed due between January 1 and March 1.—Foreign Corporations qualified after February 27, 1915.

Annual Return of Net Income due on or before March 1.—Domestic and Foreign Corporations.

Annual Report due on or before March 1.—Domestic and Foreign Corporations.

NEW YORK—Annual Franchise Tax Report and Tax of Real Estate Corporations due between January 1 and March 1.—Domestic and Foreign Real Estate Corporations. Form 42 CT, Art. 9 of the Tax Law.

Returns of Information at the source and Returns of Tax Withheld at the source due on or before February 15.—Domestic and Foreign Corporations.

NORTH DAKOTA—Quarterly Retail Sales Tax Return and Payment due on or before January 20.—Domestic and Foreign Corporations.

OHIO—Report to Department of Industrial Relations due on or before February 1.—Domestic and Foreign Corporations employing three or more persons in Ohio.

Retail Sales Tax Return and Vendors' Excise Tax due on or before January 31.—Domestic and Foreign Corporations.

Annual Franchise Tax Report due between January 1 and March 31.—Domestic and Foreign Corporations.

OKLAHOMA—Returns of Information at the source due on or before February 15.—Domestic and Foreign Corporations.

OREGON—Returns of Information at the source due on or before February 15.—Domestic and Foreign Corporations.

PENNSYLVANIA—Report of Unclaimed Dividends, Credits, etc., due in January.—Domestic Corporations.

RHODE ISLAND—Annual Report due during February.—Domestic and Foreign Corporations.

Corporation Tax Return due on or before March 15.—Domestic and Foreign Corporations.

SOUTH CAROLINA—Annual Statement due on or before January 31.—Foreign Corporations.

Annual License Tax Report due during February.—Domestic and Foreign Corporations.

SOUTH DAKOTA—Annual Capital Stock Report due before March 1.—Foreign Corporations.

Quarterly Retail Sales Tax Return and Payment due on or before January 15.—Domestic and Foreign Corporations.

TEXAS—Annual Franchise Tax Report due between January 1 and March 15.—Domestic and Foreign Corporations.

UNITED STATES—Withholding at source due on or before January 31.—Domestic and Foreign Corporations.

Returns of Information at the source due on or before February 15.—Domestic and Foreign Corporations.

UTAH—Returns of Information at the source due on or before February 15.—Domestic and Foreign Corporations.

VERMONT—List of Stockholders due on or before January 31.—Domestic and Foreign Corporations.

Returns of Information at the source due on or before February 15.—Domestic and Foreign Corporations.

Annual Report due on or before March 1.—Domestic Corporations.

Annual License Tax Return and Payment due on or before March 1.—Domestic and Foreign Corporations.

Income (Franchise) Tax Return due on or before March 15.—Domestic and Foreign Corporations.

VIRGINIA—Annual Registration Fee due on or before March 1.—Domestic and Foreign Corporations.

Annual Franchise Tax due on or before March 1.—Domestic Corporations.

WEST VIRGINIA—Annual Business and Occupation (Gross Sales) Tax Return and Payment due on or before January 30.—Domestic and Foreign Corporations.

WISCONSIN—Privilege Dividend Tax Return and Tax due on or before January 31.—Domestic and Foreign Corporations.

The Corporation Trust Company's Supplementary Literature

In connection with its various activities The Corporation Trust Company publishes the following supplemental pamphlets, any of which will be sent without charge to readers of The Journal. Address The Corporation Trust Company, 120 Broadway, New York, 5, N. Y.

Amendments to Delaware Corporation Law, 1945. Contains complete text of the amendments adopted at the 1945 session of the legislature, giving for each one a brief explanation of its purpose and effect.

What Constitutes Doing Business. (Revised to October 1, 1943.). A 181-page book containing brief digests of decisions selected from those in the various states as indicating what is construed in each state as "doing business."

Contracts You Can't Enforce. Interesting case-histories which show advisability of contractor getting lawyer's advice before undertaking construction work outside his home state, even for federal government.

After the Agent for Service Is Gone. What will happen *then* if suit is brought against the company? Some examples taken from actual court cases, with full texts of the final decisions.

Delaware Corporations. Presents in convenient form a digest of the Delaware corporation law, its advantages for business corporations, the attractive provisions for non par value stock, and a brief summary of the statutory requirements, procedure and costs of incorporation.

Spot Stocks—and Interstate Commerce. Treats, in a general and informal way, of the relation between the carrying of goods in warehouses in outside states and the statutory obligations which that activity, in some states, places on the corporation owning the goods.

We've Always Got Along This Way. A 24-page pamphlet of cases in various states in which corporation officials who had thought they were getting along very well with statutory representation by a business employe suddenly found themselves in trouble.

What! *We* Need a Transfer Agent? *Nonsense!* The foregoing is the title of a pamphlet which describes in detail, with many illustrations, the exact steps through which a stock certificate goes in being transferred from one owner to another by an experienced transfer agent.

Judgment by Default. Gives the gist of Rarden v. Baker and similar cases, showing how corporations qualified as foreign in any state and utilizing their business employes as statutory representatives are sometimes left defenseless in personal damage and other suits.

THE CORPORATION TRUST COMPANY
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THE CORPORATION JOURNAL

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